

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

RICHARD A. DAVIDSON,
Plaintiff,

vs.

STATE OF OHIO, *et al.*,
Defendants.

Case No. 1:18-cv-777

Black, J.
Litkovitz, M.J.

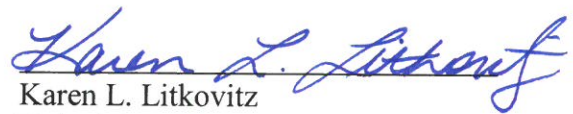
**REPORT AND
RECOMMENDATION**

On November 12, 2018, plaintiff filed this prisoner civil rights action against defendants the State of Ohio and Mike DeWine, challenging the constitutionality of Ohio Rev. Code § 2907.04(A), the state criminal statute under which he was convicted and sentenced, and asserting his actual innocence. On December 10, 2018, the undersigned issued a Report and Recommendation that the complaint be dismissed for failure to state a claim. (Doc. 4). In pertinent part, the undersigned recommended that to the extent that plaintiff was challenging his state court conviction, his sole remedy was a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Further, the undersigned recommended that to the extent that plaintiff was seeking monetary damages for his allegedly unlawful conviction, his claims were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). (*See id.* at PageID 48-50). The December 10, 2018 Report and Recommendation is currently pending before the district court.

Plaintiff now seeks leave to amend his complaint. (Docs. 5, 7). However, it appears that the proposed amendment would simply reiterate plaintiff's constitutional challenges to Ohio Rev. Code § 2907.04(A). (*See* Doc. 7, at PageID 56-59). As stated in the undersigned's December 10, 2018 Report and Recommendation, plaintiff's sole remedy to challenge his state court conviction is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Because plaintiff's proposed amendment does not cure the deficiencies identified in recommending the dismissal of plaintiff's complaint, his motion to amend should be denied.

IT IS THEREFORE RECOMMENDED THAT plaintiff's motion to amend his complaint (Docs. 5, 7) be **DENIED**.

Date: 12/21/18


Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).